

UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF CALIFORNIA

LASHAUNDA M. MCDANIEL,

Plaintiff,

v.

PATRICK R. DONAHOE, et al.,

Defendants.

Case No. [12-cv-05944-JSC](#)

**NOTICE TO PLAINTIFF REGARDING
SUMMARY JUDGMENT MOTIONS
AND ORDER SETTING SUMMARY
JUDGMENT BRIEFING SCHEDULE**

Defendant in this case may file a motion for summary judgment under Rule 56 of the Federal Rules of Civil Procedure. This notice is written to explain to the pro se plaintiff how the summary judgment process works and the consequences if a summary judgment motion is granted in the defendant's favor. *See Rand v. Rowland*, 154 F.3d 952 (9th Cir. 1998).

A motion for summary judgment provides a procedure for terminating an action without trial if "there is no genuine issue as to any material fact and . . . the moving party is entitled to judgment as a matter of law." Fed. R. Civ. P. 56(c). Material facts are those which may affect the outcome of the case. *Anderson v. Liberty Lobby, Inc.*, 477 U.S. 242, 248 (1986). A dispute as to a material fact is genuine if there is sufficient evidence for a reasonable jury to return a verdict for the party opposing the motion for summary judgment. *Id.*

The party filing the motion for summary judgment is called the "moving party"; the party opposing the motion is called the "opposing party." The moving party bears the initial burden of identifying those portions of the pleadings, discovery and affidavits which demonstrate the absence of a genuine issue of material fact. *Celotex Corp. v. Cattrett*, 477 U.S. 317, 323 (1986). Where the moving party will have the burden of proof on an issue at trial, it must affirmatively demonstrate that no reasonable trier of fact could find other than for the moving party. But on an

1 issue for which the opposing party will have the burden of proof at trial, the moving party need
2 only point out that there is an absence of evidence to support the opposing party's case. *Id.*

3 Once the moving party meets its initial burden, the opposing party may not rest upon the
4 allegations or denials of unverified pleadings, but must file an opposition setting forth specific
5 facts showing that there is a genuine issue for trial. Fed. R. Civ. P. 56(e). The facts relied upon
6 must be admissible under rules governing admission of evidence generally, and must be presented
7 in items such as: (1) declarations based on personal knowledge, accompanied by sworn or certified
8 copies of all documents referred to in the declaration,¹ *id.*; (2) discovery documents, such as
9 answers to deposition questions, answers to interrogatories or answers to requests for admissions,
10 that have been properly authenticated by a declaration by someone with personal knowledge of the
11 documents' accuracy, Fed. R. Civ. P. 56(c); (3) verified complaints that meet the requirements of
12 Rule 56(e)—that is, complaints containing factual assertions that are within the pleader's personal
13 knowledge and are otherwise admissible evidence, *see Schroeder v. McDonald*, 55 F.3d 454,460
14 (9th Cir. 1995); *see also Keenan v. Hall*, 83 F.3d 1083, 1090 n.1 (9th Cir. 1996). The evidence
15 presented on each claim must not only be admissible, but also must be sufficient for a jury to
16 reasonably return a verdict for the opposing party. *Anderson*, 477 U.S. at 249. If the opposing
17 party fails to contradict the moving party with declarations or other evidence, the moving party's
18 evidence may be taken as the truth.

19 It is not the district court's job to search the record for a genuine issue of triable fact.
20 *Keenan v. Allen*, 91 F.3d 1275, 1279 (9th Cir. 1996). The opposing party has the burden of
21 identifying with reasonable particularity the evidence that precludes summary judgment. *Id.*

22 If the moving party has met its burden of proof and the opposing party fails to set forth
23 specific facts showing that there is a genuine issue for trial, then "the moving party is entitled to
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25 ¹ A declaration is a statement of facts which are personally known to the person making the
26 declaration. The facts in a declaration must be admissible in evidence, i.e., evidentiary facts and
27 not conclusions or argument. The declaration must show affirmatively that the person making the
28 declaration is competent to testify to the matters stated therein and contain no inadmissible hearsay
or opinions. A declaration must be made under penalty of perjury, i.e., it must be signed at the
end after the statement "I declare under penalty of perjury that the foregoing is true and correct
and that this declaration was executed on [date]."


1 judgment as a matter of law.” *Celotex Corp.*, 477 U.S. at 323. A successful motion for summary
2 judgment terminates the action without trial, and will result in a final judgment on the merits.

3 Following the Case Management Conference held on February 27, 2014, the Court sets the
4 following schedule for Defendant’s motion for summary judgment:

5 Motion due by: April 4, 2014
6 Opposition due by: May 9, 2014
7 Reply due by: May 20, 2014
8 Hearing on the motion: June 19, 2014 at 9:00 a.m.

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10 **IT IS SO ORDERED.**

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12 Dated: March 3, 2014

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15 JACQUELINE SCOTT CORLEY
16 United States Magistrate Judge
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